IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 25.07.2007

Coram:-

The Hon'ble Mr. Justice R.REGUPATHI

Crl.R.C. Nos.1016 to 1023 of 2007
and
M.P. Nos.1 of 2007
and
Crl.O.P. No.10103 of 2007

Maya Venkatesan ... Petitioner in all cases / Accused

vs.

State by Deputy
Superintendent of Police,
Crime Branch CID,
Govt. Estate,
Chennai-600 002. ... Respondent in all cases / Complainant

Crl.R.C. No.1016 of 2007:- Revision under Section 397 read with Section 401 Cr.P.C. as against the order passed by the XI Metropolitan Magistrate, Saidapet, Chennai, dated 02.07.2007, in Crl.M.P. No.1636 of 2007 in 'X' Crime No.472 of 2006, allowing the petition to cancel the bail granted in favour of the petitioner.

Crl.R.C. No.1021 of 2007:- Revision under Section 397 read with Section 401 Cr.P.C. as against the order passed by the XI Metropolitan Magistrate, Saidapet, Chennai, dated 06.11.2007, in Crl.M.P. No.1641 of 2007 in 'X' Crime No.634 of 2006, allowing the petition to cancel the bail granted in favour of the petitioner.

Crl.R.C. No.1022 of 2007:- Revision under Section 397 read with Section 401 Cr.P.C. as against the order passed by the XI Metropolitan Magistrate, Saidapet, Chennai, dated 06.11.2007, in Crl.M.P. No.1642 of 2007 in 'X' Crime No.638 of 2006, allowing the petition to cancel the bail granted in favour of the petitioner.

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Crl.R.C. No.1023 of 2007:- Revision under Section 397 read with Section 401 Cr.P.C. as against the order passed by the XI Metropolitan Magistrate, Saidapet, Chennai, dated 02.07.2007, in Crl.M.P. No.1643 of 2007 in 'X' Crime No.1 of 2006, allowing the petition to cancel the bail granted in favour of the petitioner.

Crl.R.C. No.1017 of 2007:- Revision under Section 397 read with Section 401 Cr.P.C. as against the order passed by the XI Metropolitan Magistrate, Saidapet, Chennai, dated 06.11.2006, in Crl.M.P. No.1637 of 2007 in 'X' Crime No.492 of 2006, allowing the petition to cancel the bail granted in favour of the petitioner.

Crl.R.C. No.1018 of 2007:- Revision under Section 397 read with Section 401 Cr.P.C. as against the order passed by the XI Metropolitan Magistrate, Saidapet, Chennai, dated 06.11.2006, in Crl.M.P. No.1638 of 2007 in 'X' Crime No.499 of 2006, allowing the petition to cancel the bail granted in favour of the petitioner.

Crl.R.C. No.1019 of 2007:- Revision under Section 397 read with Section 401 Cr.P.C. as against the order passed by the XI Metropolitan Magistrate, Saidapet, Chennai, dated 06.11.2006, in Crl.M.P. No.1639 of 2007 in 'X' Crime No.633 of 2006, allowing the petition to cancel the bail granted in favour of the petitioner.

Crl.R.C. No.1020 of 2007:- Revision under Section 397 read with Section 401 Cr.P.C. as against the order passed by the XI Metropolitan Magistrate, Saidapet, Chennai, dated 06.11.2006, in Crl.M.P. No.1640 of 2007 in 'X' Crime No.635 of 2006, allowing the petition to cancel the bail granted in favour of the petitioner.

For Petitioner : Mr.S.Shanmuga Velayutham,
Senior Counsel for
Mr.K.Sabapathy.

For Respondent : Mr.Hasan Mohamed Jinnah,
Govt. Advocate (Crl. Side)

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COMMON ORDER

The Criminal Revision Petitions have been preferred as against the order of the XI Metropolitan Magistrate, Saidapet, Chennai, dated 02.07.2007, cancelling the statutory bail granted to the petitioner; and the Criminal Original Petition has been filed seeking for the grant of Anticipatory Bail in Crime No.2 of 2007, pending investigation/enquiry for the alleged offences punishable under Sections 120(b), 406, 420 and 307 read with 27 of the Indian Arms Act, 1959, on the file of the respondent police.

2. Firstly, as regards the Criminal Original Petition, seeking for grant of anticipatory bail, the case of the prosecution is that the petitioner, with his associates, projecting himself as the Managing Director of M/s.Nellai Cements, called for tenders from civil contractors through paper publications and received quotations. He concluded contracts with several contractors receiving huge money as E.M.D. with the promise that work orders would be issued to them. The total money so received runs to several crores. In the present case alone, he is alleged to have received Rs.20,00,000/- from the complainant, however, he neither issued the work order as promised by him nor returned back the amount received as E.M.D. The amount was given by the complainant on 10.11.2004 and after awaiting for the work orders nearly for one year, when he went to the petitioner demanding either issuance of the work order or repayment of the money, it is alleged that the petitioner threatened him by showing pistol. It is seen that several such complaints have been entertained by the respondent-police, resulting in arrest of the petitioner on 28.07.2006. The present case in Crime No.2 of 2007 has been taken on file on 23.02.2007. It is also seen that a detention order under the Tamil Nadu Act 14 of 1982, branding the petitioner as 'Goonda', was clamped on him on 15.08.2006.

3. Learned Senior Counsel for the petitioner, admitting the acceptance of E.M.D. to the tune of Rs.20,00,000/- by the petitioner from the complainant, submits that, due to various circumstances, work orders as promised could not be issued; that, on the strength of the complaints given by some other persons, 8 cases have been registered against the petitioner, resulting in his arrest; and that, in all those cases, since the respondent-police could not file final report in time, he was enlarged by the Magistrate on statutory bail. In the meantime, the petitioner filed a Habeas Corpus Petition to quash the order of detention passed against him under the Tamil Nadu Act 14 of 1982 and the said Petition was allowed on 05.04.2007. By stating that the petitioner has been enlarged on bail in all the 8 cases registered against him; that the present case has been registered at a later point of time ie., on 23.02.2007, when he

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was in judicial custody; and that he is willing to repay the entire amount to the complainant in the present case; learned Senior Counsel submits that the grant of anticipatory bail may be considered positively.

4. Coming to the Criminal Revision Petitions, the same have been filed against the order passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai, cancelling the bail already granted to the petitioner. As could be seen, the petitioner was earlier granted statutory bail in all the 8 cases since final report was not filed by the respondent police within the stipulated period. While enlarging the petitioner on bail, one of the conditions imposed was that he must appear before the Investigating Officer daily at 10.30 A.M. from the date of release until further orders. Though the petitioner has come out from judicial custody on 06.04.2007, he has not complied with the conditions imposed. A petition, seeking extension of time for complying with the conditions, was filed by him, and by order dated 25.04.2007, the learned Magistrate directed to comply with the conditions from 28.04.2007 onwards. Subsequent to that also, there was failure on the part of the petitioner in complying with the conditions and a second petition for extension of time was filed, however, after hearing both sides, the learned Magistrate declined such request by order dated 22.05.2007. Thereafter, a petition for cancellation of the bail granted to the petitioner was filed by the respondent police. Notice was issued to the petitioner, whereupon, a detailed counter has been filed before the learned Magistrate, who, after elaborately considering the case of both the parties, by order dated 02.07.2007 cancelled the bail granted in favour of the petitioner. Aggrieved by the same, the Criminal Revision Cases have been field before this Court.

5. While advancing arguments in the Revision Cases, learned Senior Counsel for the petitioner submits that the petitioner could not comply with the conditions imposed in the Bail Order as he was suffering from acute lumbar sacral dislocated disease and was also advised by the Doctor to undergo a surgery. He states that a sum of Rs.2,48,55,636/- has been settled and that the petitioner would make necessary arrangements for payment of the balance amount. He pleads that considering the release of the petitioner in all the eight cases on statutory bail; non-compliance of the conditions imposed was only due to the ailment he was suffering, which ultimately led to the cancellation of the statutory bail granted; his prolonged judicial custody for about eight months and his willingness to co-operate with the investigation as well as the enquiry before the Magistrate, a positive order may be passed in the Revision Cases, even by imposing stringent conditions, so that the petitioner could come out from custody.

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6. Per contra, learned Government Advocate, at the first instance, vehemently opposing the grant of anticipatory bail, submits that the petitioner received huge sums from 24 contractors towards E.M.D., which runs to Rs.5,72,07,085/-; that 9 cases have been registered against him including the present case in Crime No.2 of 2007; that investigation in all these cases is pending; that 14 cases of similar nature are yet to be registered; and that those 14 cases would be registered soon, as substantive materials have been collected and formalities would be completed shortly.

6-A. In respect of the Revision Cases, he submits that in all the 8 cases, the petitioner has come out on statutory bail granted by the Magistrate since charge sheet was not filed in time; and that even though time was extended for compliance of the conditions imposed in the bail orders, he failed to comply with the same, resulting in filing of the petition by the police to cancel the bail granted. According to him, after obtaining positive orders, the petitioner would have very well appeared before the respondent-police for the progress of the investigation; however, all along his only endeavour was to avoid himself from interrogation under one pretext or other. He points out that the learned Magistrate, while passing the order, has taken into consideration all aspects of the matter including the plea made with regard to the ailment of the petitioner by observing that the accused/petitioner was not suffering from the disease as claimed by him. By stating that information and materials may have to be collected from the petitioner and that only because of the absconding attitude of the petitioner, progress of the investigation in the present cases as well as the cases that are yet to be registered is delayed; he submits that if the Criminal Original Petition and the Revision Cases are ordered, great prejudice would be caused to the prosecution.

7. Learned counsel for the intervener/complainant submits that not only the complainant (in Crime No.2 of 2007) but other complainants in the 24 cases have suffered untold hardship due to retention of the amount paid by them towards E.M.D., which the petitioner is keeping without repayment for years together. According to him, the complainants and others have suffered great financial repercussions, in that, they could not continue their further activities as they have spared huge sums with the petitioner on his false representation. Though sufficient amount is available with the petitioner, no repayment has been made by him to anyone so far.

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8. I have perused the materials available on record and carefully considered the arguments advanced on either side. The petitioner not only involved in the case relating to Crime No.2 of 2007, wherein, he seeks for Anticipatory Bail, but also in 8 other cases. Further, as could be seen from the submission made by the learned Government Advocate, about 14 cases are likely to be registered against him shortly. He was enlarged on the earlier occasion only on statutory bail. It cannot be lost sight of that, in a case of this magnitude, where the course of investigation involves a cumbersome process, the respondent police could not file final report within the time stipulated. The petitioner as soon as he came out from judicial custody should have co-operated with the respondent police for the progress of the investigation. Even after getting extension of time for compliance of the conditions imposed in the bail order, he did not comply with the same and continued to abscond. At least, after the filing of the petition to cancel the bail, he could have appeared before the respondent police to show his bona fides, on the contrary, he resisted the said petition by filing counter. When the petitioner/accused is so disobedient to the order of the court and disregarded the same by taking it for granted, I am of the view that his plea for grant of anticipatory bail in Crl.O.P. No.10103 of 2007 does not merit acceptance.

8-A. Coming to the Revision Cases, with regard to the statement made by the learned Senior Counsel for the petitioner that the accused has settled Rs.2,48,55,636/-, it has to be pointed out that no plausible material has been produced to substantiate such payment to the contractors. Further, in respect of the submission made by the learned Senior Counsel that in the Revision Cases filed against the order of the Magistrate, cancelling the bail already granted, this Court, by invoking its inherent powers under Section 482 of the Code of Criminal Procedure, can very well grant the relief sought for by the petitioner; the objection/contention raised by the learned Government Advocate viz., these Revisions filed against the order passed by the Magistrate, which is interlocutory in nature, are not maintainable, cannot be simply brushed aside. Learned Government Advocate, in support of his contention, has relied on a decision of this Court reported in 1980 The Madras Law Journal Reports 375 (Somaram vs. Jewantharaj Lunia and another), wherein, it has been categorically held that an order of cancellation of bail is an interlocutory order and no revision would lie against such order. I am in entire agreement with the proposition laid down in the above case law of this Court. Both on merits as well as on the ground of maintainability, the Criminal Revision Cases have to be dismissed.

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9. In view of the foregoing reasons, I do not find any merit in the Crl.O.P. as well as the Criminal Revision Cases and the same are dismissed. Connected Miscellaneous Petitions stand closed.

JI.

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The XI Metropolitan Magistrate, Saidapet, Chennai.

2. -Do- Thro' The Chief Metropolitan Magistrate, Egmore,Chennai.

3. Deputy Superintendent of Police, Crime Branch CID,
Govt. Estate, Chennai-600 002.

4.The Public Prosecutor, High Court,Madras.

+24 ccs to Mr.K.Sabapathy, Advocate Sr.Nos.46609 to 46616.

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Crl.R.C. Nos.1016 to 1023
of 2007 & connected M.Ps.
and Crl.O.P.No.10103/2007

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